

March 5, 2007

**DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY**

Appeal

Name of Petitioner: Kathleen J. Long

Date of Filing: January 29, 2007

Case Number: TFA-0188

On January 29, 2007, Kathleen J. Long filed an appeal from a determination issued to her on January 16, 2007 by the Department of Energy's (DOE) National Nuclear Security Administration Service Center, Albuquerque (NNSA). In that determination, NNSA responded to a request for documents that Ms. Long submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. NNSA determined that it could not locate records responsive to Ms. Long's request. This appeal, if granted, would require NNSA to perform an additional search and release any responsive documents or issue a new determination justifying the withholding of those documents.

I. Background

Ms. Long initially filed a request with the DOE's Oak Ridge Office (ORO) for records pertaining to her late father, a former K-25 employee. *See* Letter from NNSA to Kathleen J. Long (January 16, 2007) (Determination Letter). Specifically, Ms. Long requested her father's medical records, personnel records, radiation exposure and industrial hygiene records, and personnel security file. *Id.* After issuing a response to Ms. Long's request, ORO forwarded the request to NNSA for a search. According to ORO, it "send[s] requests for records on former K-25 employees to NNSA to also conduct a search at Y-12 because most official files on former K-25 employees were transferred to Y-12 in 1998 for management and storage." *See* Electronic Mail Message from Amy Rothrock, ORO, to Diane DeMoura, OHA (February 1, 2007). In its determination letter, NNSA stated that it contacted the Y-12 Site Office to request a search for records. *See* Determination Letter. According to NNSA, the search yielded no documents responsive to Ms. Long's request. *Id.*

Ms. Long filed the present appeal challenging the adequacy of the search performed by NNSA. Letter from Kathleen J. Long to OHA (January 20, 2007) (Appeal Letter). In her appeal, Ms. Long states that she "find[s] it hard to believe that these records, which would be vital to

maintaining accurate data from any government organization, would somehow just be missing.” *Id.*

II. Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must “conduct a search reasonably calculated to uncover all relevant documents.” *Truitt v. Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). “The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials.” *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Doris M. Harthun*, 28 DOE ¶ 80,282 (2003).

In reviewing this appeal, we contacted NNSA to discuss the search. NNSA informed us that, in responding to Ms. Long’s request, it forwarded the request for records to the Y-12 site and “all organizations searched current and archived records for [records pertaining to Ms. Long’s late father] and no records were located. His employment history shows that he never worked at the Y-12 site. Even if [his] records were transferred from K-25 to Y-12, they would have been located by these organizations.” Electronic Mail Message from Terry Apodaca, NNSA, to Diane DeMoura, OHA (February 15, 2007).

According to a representative from the Y-12 site, Y-12 searched for records “in the medical, personnel, [industrial hygiene], RadCon, and Plant Records organizations.” Electronic Mail Message from Janet Wood, Y-12, to Diane DeMoura, OHA (February 27, 2007). Regarding the requested medical records, Y-12 searched medical databases and “the actual filed records” and no records were found. *Id.*

Since [Ms. Long’s late father was] a former [K-25] employee, the active medical records were checked to verify if [Y-12’s medical office] still had the record or if it had been send to Plant Records...Since Plant Records responded that they did not have the record, Medical further investigated by checking a spreadsheet listing medical records that have been transferred to [Oak Ridge National Laboratory], K-25, or Wackenhut. An old Access database that lists medical records sent to the vault was also checked and no records were located.

Id. Y-12 searched “actual filed [personnel] records” but did not locate any records responsive to Ms. Long’s request. *Id.* Y-12 searched for industrial hygiene records in “the Comprehensive Tracking System and [by searching] several manual lists of non-digitized records for evidence of personal monitoring records” but did not locate any responsive documents. *Id.* Finally, Y-12 searched several radiation exposure records—monitoring data from years prior to 1992, external monitoring data prior to 1997, extremity monitoring data prior to 1997, and complete incident reports including radiological workplace restrictions—but did not locate any documents responsive to Ms. Long’s request. *Id.*

Based on this information, we find that NNSA performed an extensive search reasonably calculated to reveal records responsive to Ms. Long's request. The search was, therefore, adequate. Accordingly, Ms. Long's appeal should be denied.

It Is Therefore Ordered That:

(1) The Appeal filed on January 29, 2007, by Kathleen J. Long, OHA Case No. TFA-0188, is hereby denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

William M. Schwartz
Senior FOIA Official
Office of Hearings and Appeals

Date: March 5, 2007